IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14307 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEENABEN REVASHANKER THAKKER

Versus

CHAIRMAN - BHU AREA DEVELOPMENAUTHORITY

Appearance:

1. Special Civil Application No. 14307 of 2003

MR NALIN K THAKKER for Petitioner No. 1-2

MR TH SOMPURA for Respondent No. 1

MR SN SHELAT, ADVOCATE GENERAL, with

Ms MAITHILI MEHTA, AGP, for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 11/08/2004

ORAL JUDGEMENT

RULE. Service of rule is waived by learned advocate Shri T.H. Sompura for respondent No. 1 and by learned AGP Ms. Maithili Mehta for respondents Nos. 2 and 3.

2. The petitioners, alongwith their other family members, were owners of land bearing Survey No. 2402 admeasuring 198.82 sq.mt. at Bhuj.

3. The petitioners have approached this court with a grievance that, in pursuance of Bhuj Town Planning Scheme No. 7 made under the provisions of the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as 'the Act'), the said survey number had been converted into Original Plot No. 917 and the petitioners have not been allotted any final plot in lieu of their Original Plot. Instead of allotment of a final plot at the place where their original plot was situated, respondent No. 1 has offered allotment of another plot at one of its relocation sites. Initially, petitioner No.2 had agreed to have allotment of plot at another place because, petitioner No. 2 had an impression that another plot was to be allotted in addition to the original plot, which the petitioners are having, but subsequently, the petitioners came to know that in lieu of their original plot, no final plot was to be allotted and another plot is being allotted in pursuance of a policy of respondent No. 1 and that too upon making some payment by the petitioners.

4. Before the matter was effectively argued, it was very fairly submitted on behalf of the respondents that it is possible to make variation in the scheme, which has already been sanctioned. It has been submitted that if the petitioners submit an appropriate application for variation of the scheme, it is possible to allot a final plot with different boundaries at the place, where the petitioners were having their original plot. It has been however very fairly submitted by the learned Advocate General and by learned advocate Shri Sompura that as the scheme has been finally sanctioned under the provisions of sec. 65 of the Act, it is not possible for the authorities to take any action at this stage.

5. Looking to the peculiar facts of the case, and especially in view of some misunderstanding on the part of petitioner No. 2 that the petitioners were to be allotted a plot of land in addition to their original plot, it would be just and proper if the petitioners submit an application for variation of the scheme to respondent No. 1. Upon getting the application,

respondent No. 1 shall forward the same to the State of Gujarat with its remarks so that the State of Gujarat can take appropriate decision for variation of the scheme under sec. 70 of the Act.

6. It has been submitted by learned advocate Shri Thakker that the petitioners shall submit an application to the Registry of this court so that, alongwith a copy of this order, the application can be forwarded to respondent No. 1.

7. In the circumstances, it is directed that the petitioners shall submit an application for variation to the Registry of this court on or before 27th August, 2004 and the said copy of the application shall be forwarded to respondent No. 1 alongwith a copy of this order. The learned advocate has submitted that the petitioners would take direct service of this order so that alongwith a copy of this order, the application can also be forwarded to respondent No. 1 by the petitioner. Upon getting the application, respondent No. 1 shall scrutinize the same, and alongwith its remarks, shall forward the same to respondent No. 3-Government as soon as possible. It is hoped that the State of Gujarat shall also scrutinize the application and shall take appropriate decision under the provisions of sec. 70 of the Act at an early date.

8. As the matter is required to be considered by respondents Nos. 1 and 3, till final decision is taken by respondent No. 3 under sec. 70 of the Act, the building (excluding the compound wall) constructed by the petitioners shall not be demolished.

9. In view of the above direction, the petition is disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

D.S. permitted.

(A.R. Dave, J.)

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